

Revised 03/06 WDNY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)**

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. Derek Getman, 19B0879

2. _____

-VS-

B. Full Name(s) of Defendant(s) *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. J. Vondracek

4. _____

2. John Doe

5. _____

3. Megan Palmer

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION *NOTE: To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: Derek Getman, 19B0879

Present Place of Confinement & Address: Clinton Correctional Facility (Annex); 1074 Route
374, P.O Box 2002, Dannemora, New York 12929

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: J. Vondracek

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity

Address of Defendant: Elmira Correctional Facility; Davis St., P.O Box 500
Elmira, New York 14901-0500

Name of Defendant: John Doe

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity

Address of Defendant: Elmira Correctional Facility; Davis St., P.O Box 500
Elmira, New York 14901-0500

Name of Defendant: Megan Palmer

(If applicable) Official Position of Defendant: Menatal Health Therapist "LMHC" RC II

(If applicable) Defendant is Sued in X Individual and/or _____ Official Capacity

Address of Defendant: Elmira Correctional Facility; Davis St., P.O Box 500
Elmira, New York 14901-0500

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes X No _____

If Yes, complete the next section. NOTE: *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): Derek Getman, 19B0879

Defendant(s): State of New York

2. Court (if federal court, name the district; if state court, name the county): Court of Claims,
Albany County

3. Docket or Index Number: Claim # 134704

4. Name of Judge to whom case was assigned: Richard E. Sise

5. The approximate date the action was filed: May 26, 2020
6. What was the disposition of the case?

Is it still pending? Yes X No

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

By court for failure to exhaust administrative remedies;

____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

plaintiff

defendant.

- B. Have you begun any other lawsuits in federal court which relate to your imprisonment?**

Yes _____ No **X**

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

- 1. Name(s) of the parties to this other lawsuit:**

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. **Docket Number:** _____

4. Name of District or Magistrate Judge to whom case was assigned:

5. The approximate date the action was filed: _____

- 6. What was the disposition of the case?**

Is it still pending? Yes_____ No_____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) April 23, 2019,
defendant (give the **name and position held of each defendant** involved in this incident) J. Vondracek, a
correctional officer in the Mental Health Unit at Elmira Correctional Facility

did the following to me (briefly state what each defendant named above did): while on duty and working for the Department of Corrections, violated my 8th Amendment Right to be free from cruel and unusual punishment. Mr. Vondracek unprovoked and without cause, maliciously assaulted me. The assault included the use of Mr. Vondracek's fist, legs and knees. I was attacked from behind and thrown into walls after entering the observation cell that I would be housed in. Prior to the assault, Vondracek was asking questions about my instant offense and why I was there. I suffered a swollen black and blue eye, jaw damage which I continue to have pain and issue with as well as other bruising

The constitutional basis for this claim under 42 U.S.C. § 1983 is: violation of my 8th Amendment Right when excessive force was used even though no force was needed.

The relief I am seeking for this claim is (briefly state the relief sought): monetary compensation for physical and emotional damages. I also seek the termination of Mr. Vondracek employment and to bar Mr. Vondracek from any future job that has a authority position.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? X Yes _____ No If yes, what was the result? Grievance was
denied by owning facility

Did you appeal that decision? X Yes No If yes, what was the result? Still waiting on a
result from CORC as of May 13, 2020

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) April 23, 2019,
defendant (give the **name and position held of each defendant** involved in this incident) John Doe and Mr.
Vondracek, correctional officers at Elmira Correctional Facility working in the
Mental Health Unit

did the following to me (briefly state what each defendant named above did): Failed to protect me when Mr. Vondracek subjected me to physical punishment at his own hands. While Mr. Vondracek was assaulting me, John Doe stood at the cell entrance door and did nothing to stop the assault. John Doe only intervened after Mr. Vondracek started to pick me up by the neck against the wall and choke me.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Violation of my 8th Amendment Right when the Officers knew I was in harms way and failed to protect me.

The relief I am seeking for this claim is (briefly state the relief sought): Both Officers to be terminated from employment with the State and barred from gaining future authority positions. I also seek monetary compensation for the assault that left me scare and pain

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? X Yes _____ No If yes, what was the result? Grievance was denied by owning facility

Did you appeal that decision? X Yes _____ No If yes, what was the result? Still waiting on a result from CORC as of May 13, 2020

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

I request the authority position of each named defendant be striped and future barment from working for the State or any other position that holds an authority position over an individual. I seek monetary compensation for pain and suffering and whatever else the court may deem appropriate.

Do you want a jury trial? Yes X No _____

A. THIRD CLAIM: On (date of the incident) April 24, 2019

defendant (give the name and position held of each defendant involved in the incident) Ms.Megan Palmer a Mental Health Therapist at Elmira Correctional Facility Mental Health Unit

did the following to me (briefly state what each defendant named above did): When being informed inperson by myself, excercised delibrate indifference to my health and safety. Ms.Palmer ignored the obvious conditions of my swollen black and blue eye and pain and failed to get me medical attention. In doing so, she also failed to report the incident and investigate enough to make an informed judgement according to my medical file. I received no medical treatment or attention at the time. As a result, I still continue to suffer from headaches and general pain throughout my jaw especially when trying to eat. After numerous times of being asked to move back to poulation because of my safety, she refused to move me the same day knowing there was a serious conflict between the Officers and myself. The Officers continue to work that day and the following. She ignored my plea for help.

The constitutional basis for this claim under 42 U.S.C. §1983 is: Violation of my 8th Amendment Right to medical treatment when Ms. Palmer was deliberate indifferent to my Health and Safety.

The relief I am seeking for this claim is (briefly state the relief sought): Monetary compensation for emotional and psychological harm. I also seek the termination and revocation of Ms.Palmer's medical license.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? x Yes ___ No If yes, what was the results?
Grievance was denied by the owning facility

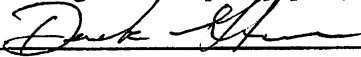
Did you appeal that decision? x Yes ___ No If yes, what was the results? _____
Still waiting a result from CORC as of May 13, 2020

Attach copies of any documents that indicate that you have exhausted this claim. If you did not exhaust your administrative remedies, state why you did not do so:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 2021
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.



Signature(s) of Plaintiff(s)